

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
Marshall Johnson
Ken Nickolai
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of an Investigation and Audit of
Northern States Power Company's Service
Quality Reporting

ISSUE DATE: September 17, 2004

DOCKET NO. E,G-002/CI-02-2034

In the Matter of an Inquiry Into Possible Effects
of Financial Difficulties at NRG and Xcel on
NSP and its Customers and Potential
Mitigation Measures

DOCKET NO. E,G-002/CI-02-1346

ORDER APPROVING SERVICE QUALITY
REPORTING TARIFF AS MODIFIED

PROCEDURAL HISTORY

On August 8, 2002, the Commission met to consider the possible effects of financial difficulties at NRG Energy, Inc. and Xcel on Northern States Power Company and its customers. The Commission opened a docket (Docket No. E,G-002/CI-02-1346) and directed Xcel to respond to questions and provide information.

On January 6, 2003, the Commission issued an Order in Docket E,G-002/CI-02-1346 bifurcating the proceeding and putting the independent audit of Xcel's service quality reporting in a separate docket, Docket No. E,G-002/CI-02-2034.

On August 4, 2003, the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG) and the Minnesota Department of Commerce (the Department) filed the independent auditor's final report.

On September 24, 2003, Xcel, the Department, and the RUD-OAG filed a Settlement Agreement.

On March 10, 2004, the Commission issued its ORDER ACCEPTING SETTLEMENT AGREEMENT AS MODIFIED in this docket.

On March 29, 2004, Myer Shark filed a petition for Rehearing, Reconsideration, and Amendment of the March 10, 2004 Order.

On March 30, 2004, Xcel Energy filed a Request for Clarification or, in the Alternative, Request for Reconsideration regarding the March 10, 2004 Order.

On May 13, 2004, the Commission declined to reconsider or clarify its March 10, 2004 Order.

On June 2, 2004, Xcel filed an Election Pursuant to Service Quality Agreement that contained proposed tariffs.

On June 8, 2004, Rebecca Winegarden filed comments on Xcel's June 2, 2004 Election Pursuant to Service Quality Agreement and Myer Shark filed a Petition to Intervene.

On June 15, 2004 Mr. Shark filed a motion to close this docket and resume proceedings in Docket No. E,G-002/CI-02-1346.

On June 16, 2004 Xcel filed a reply to Mr. Shark's petition to intervene.

On June 30, 2004 the Department filed comments regarding Xcel's June 2, 2004 petition.

On July 14, 2004, Xcel filed reply comments.

On July 22, 2004 the RUD-OAG filed comments.

The Commission met on August 26, 2004 to consider this matter.

FINDINGS AND CONCLUSIONS

I. Background

In its March 10, 2004 Order requiring two modifications to the parties' Settlement Agreement, the Commission required Xcel to

- pay for periodic audits of the accuracy of its customer outage data by an independent firm overseen by the Department and the RUD-OAG; and
- file an amended service quality tariff adding "insufficient or inaccurate documentation of outages" as a performance category justifying the maximum total under-performance payment.

II. Xcel's June 2, 2004 Filing and Proposed Tariff

Following the denial of its April 1, 2004 Request for Clarification of the Commission's March 10, 2004 Order by operation of law, Xcel filed a proposed service quality tariff on June 2, 2004. Xcel asserted that its proposed tariff implemented the Commission's two modifications to the Settlement Agreement noted above by including the following language immediately after the underperformance payment schedule in Section B and in Section E:

Xcel shall pay for periodic audits of the accuracy of the outage duration data by an independent firm overseen by the Department and the RUD-OAG. The firm will have expertise in reliability reporting and electric industry practices and will evaluate the Company's outage records in light of reasonable and prudent utility practices. The verification of the Company's records by an independent firm shall identify whether the sufficiency of the documentation and/or errors in the documentation resulted in a systemic problem that materially compromised the integrity of the annually reported value for outage duration. The results of these audits will inform the decision regarding the application of any under-performance payments required under this tariff.

The SAIDI under-performance payment may be triggered for a given reporting year in the event that the underlying outage records used by the Company to determine the annually reported SAIDI values are found to be materially insufficient or inaccurate on completion of the audit process. The determination of a required payment under this provision will be made, after notice and hearing, by the Commission.

Xcel requested that the Commission formally review and approve its proposed tariff, specifically the language that addresses the Commission's modifications to the Settlement Agreement. Xcel stated that if the Commission issues an Order approving the proposed tariff, the Company would accept the Commission's modifications to the settlement. Xcel also stated that if the Commission rejected the tariff or did not formally review the tariff, the Company would void the Settlement pursuant to Paragraph 8 of the Settlement Agreement.

III. Ratepayer Rebecca Winegarden's Comments Regarding Xcel's June 2, 2004 Proposal

Ms. Winegarden objected that Xcel was attempting to reargue, obtain reconsideration, and change the substance of the March 10, 2004 Order. As an example of such change, Ms. Winegarden asserted that Xcel's proposed tariff language would bind the Commission to a more cumbersome regulation than the performance-based, utility-specific flexible model favored by the Commission. Ms. Winegarden argued that this was evidence that Xcel was seeking to re-direct, refocus or reargue the March 10, 2004 Order. She challenged the timeliness of Xcel's efforts, stating that such reargument was prohibited by statute and rule.

Based on this analysis of Xcel's filing, Ms. Winegarden also argued that the filing unduly burdened public participation by unreasonably prolonging the process. Ms. Winegarden urged the Commission not to accept Xcel's tariff language as proposed but to direct Xcel to simply accept or reject the March 10 Order's modifications.

IV. Ratepayer Myer Shark's Objection to Xcel's June 2, 2004 Proposal

Mr. Shark supported the comments of Ms. Winegarden. He argued that Xcel's June 2, 2004 filing was not truly an Election Pursuant to the Service Quality Agreement but was in essence a second petition for rehearing which, as such, was barred by Minn. Rules, Part 7829.3000, subp. 7, which states:

Subp. 7. **Second petition not entertained.** A second petition for rehearing, amendment, vacation, reconsideration, or reargument of a commission decision or order by the same party or parties and upon the same grounds as a former petition that has been considered and denied, will not be entertained.

Mr. Shark urged the Commission to refuse to act on the June 2, 2004 filing as requested by Xcel and, in effect, to accept Xcel's offer to void the Settlement Agreement. According to Mr. Shark, this would be a beneficial result, allowing the Commission to close the 2034 Docket and address the service quality reporting issues more fully and appropriately in the 1346 Docket.

V. The Department's Comments

The Department stated that it had reviewed Xcel's June 2, 2004 compliance filing. The Department stated that Xcel's proposed tariff represented a reasonable approach to implementing the Commission's modifications to the Settlement Agreement and reasonably complied with the Commission's March 10, 2004 Order. The Department recommended that the Commission approve Xcel's compliance filing.

VI. The RUD-OAG's Comments

The RUD-OAG recommended three changes in Xcel's proposed tariff .

First, the RUD-OAG recommended that the word "systemic" be removed from the proposed tariff. The RUD-OAG stated that there could be outage data reporting problems that are not "systemic" but which were still material enough to warrant the maximum underperformance payment. Consequently, the RUD-OAG argued, removing the word "systemic" would better reflect the intent of the Commission's March 10, 2004 Order.

Second, the RUD-OAG noted that although the Commission's March 10, 2004 Order requires Xcel's tariff to establish "insufficient or inaccurate documentation of outages" as a performance category justifying the maximum total underperformance payment, the proposed tariff omits the qualifier "maximum". The RUD-OAG recommended the Commission correct this omission.

Third, the RUD-OAG recommended that the proposed tariff be clarified to make it clear that the maximum under performance payment can be triggered by “insufficient or inaccurate documentation of outages” as well as by a SAIDI of 118 minutes or above. The RUD-OAG proposed tariff language to accomplish this clarification.

VII. The Commission’s Analysis and Action Regarding Xcel’s Proposed Tariff

The Commission does not accept the view expressed by Ms. Winegarden and Mr. Shark that Xcel’s June 2, 2004 filing is, in essence, a second request for reconsideration of the Commission’s March 10, 2004 Order and that it cannot, therefore, be considered. At the hearing on this matter, Xcel emphasized that its filing was a good faith effort to provide a tariff that reflected the intent of the March 10, 2004 Order’s modifications to the settlement agreement. The Company expressed a willingness to accept the Commission’s clarification whether the Company’s proposed language was consistent with the Commission’s intent. The Company also accepted the language change recommended by the RUD-OAG.

The Commission finds that Xcel’s proposed tariff, as modified by the RUD-OAG’s three changes noted above, appropriately implements the changes that the Commission’s March 10, 2004 Order made in the parties’ settlement agreement.

There is an additional modification to Xcel’s proposed tariff that the Commission will authorize. At the hearing, Xcel requested an opportunity to revisit with the parties the tariff language appearing on page 7 of 10 in the section entitled “2. Telephone Response Time” and submit revised language for that portion of the tariff that reflected the parties’ agreement. Specifically, Xcel stated that its proposed tariff did not include language regarding a “middle step” that the Company believed the parties intended to include. Xcel indicated that the missing language did not materially alter the terms of the tariff and requested an opportunity to confer with the other parties to the settlement and submit corrected language for that portion of the tariff in a compliance filing. No party objected to the Company’s request and, based on the representations made by the Company, the Commission will allow this to be done. See Order Paragraph 1, d.

The Commission therefore will accept the proposed tariff as modified by the RUD-OAG’s recommended changes and by the modified language to be agreed upon by the parties regarding the Telephone Response Time and filed as discussed above. The Commission will direct Xcel to refile the tariff thus modified. See Order Paragraph 1 for the specific changes required.

VIII. Myer Shark’s Petition to Intervene

On June 8, 2004, Myer Shark filed a petition to intervene in Docket No. E, G-002/CI-02-2034, the Commission’s investigation into Xcel’s service quality reporting. Mr. Shark alleged that the Department and the RUD-OAG entered into an improvident and unwise settlement agreement that does not adequately protect the interests of Xcel’s residential electric customers and that, as a consequence, his interests were not adequately represented by these parties. With respect to the RUD-OAG, Mr. Shark further alleged that the RUD-OAG could not properly represent his interests because the Attorney General was also designated the legal advisor to the Commission under Minn. Stat. § 216B.10.

With respect to the timeliness of his filing, Mr. Shark argued that Xcel's June 2, 2004 filing was an attempt to reopen this proceeding, which would justify the Commission in waiving the rule requirement of Minn. Rules, Part 7829.1400, subp. 2 that petitions to intervene be filed on or before the end of the reply comment period in this proceeding.

IX. Xcel's Response to Meyer Shark's Petition to Intervene

Xcel cited two defects in Mr. Shark's petition. First, Xcel stated that Mr. Shark's June 2, 2004 petition to intervene was untimely. The Company stated that under Minn. Rules, Part 7829.1400, subp. 2, Mr. Shark should have filed his petition to intervene on or before the end of the reply comment period in this proceeding.

Second, Xcel stated that Mr. Shark's interests are consistent with the interest of all ratepayers, and are adequately represented by the Department of Commerce and the RUD-OAG in this proceeding. The Company argued that although the outcome of this proceeding may impact Mr. Shark, his petition does not distinguish his interests from those of other residential ratepayers and disagreement with the terms of a negotiated agreement entered into by the RUD-OAG in its role as representative for residential ratepayers is an inadequate basis on which to conclude that Mr. Shark's interest were not adequately represented.

X. Commission Analysis and Action Regarding Mr. Shark's Petition to Intervene

Minn. Rules, Part 7829.1400, subp. 2 states:

Petition to intervene. If a person who files initial or reply comments is not entitled to intervene in commission proceedings as of right and desires full party status, the person shall file a petition to intervene before the initial or reply comment period expires. The intervention petition may be combined with the comments on the filing.

Within the meaning of the rule, the initial or reply comment period expired long before Mr. Shark filed his request to intervene and the Commission finds that varying the intervention filing deadline is not warranted in this case. The Commission rejects the allegation that Mr. Shark presented as the basis for his request, i.e. his allegation that Xcel's June 2, 2004 filing was not a compliance filing but was instead an attempt to reopen the proceeding. As noted above, the Commission has found that Xcel's June 2, 2004 filing was a compliance filing and in no way constituted, as Mr. Shark suggested, a petition initiating a round of comment and reply comments within the meaning of Minn. Rules, Part 7829.1400.¹

This is sufficient grounds to deny Mr. Shark's request. In addition, however, Mr. Shark has fully participated in this proceeding and has identified no area of participation in this matter that he wanted to have but was denied because he was not an intervener.

Accordingly, the Commission will deny Mr. Shark's request for intervener status in this matter.

¹ Since the Commission does not view Xcel's filing as an attempt to reopen the proceeding, the Commission need not decide whether an attempt to reopen the proceeding would warrant waiving the intervention filing deadline as Mr. Shark asserted.

Having denied his petition as untimely for the reasons stated, the Commission need not and does not address his claims to intervenor status on the asserted grounds that the Department and the RUD-OAG do not adequately represent his interests.

ORDER

1. The Commission hereby approves Xcel's proposed service quality tariff with the following modifications:
 - a. remove the word "systemic" from the proposed tariff (see Xcel's Proposed Service Quality Tariff page 4 of 10 and page 8 of 10)
 - b. add the word "maximum" as the second word in the second paragraph (see Xcel's Proposed Service Quality Tariff page 4 of 10 and 8 of 10);
 - c. clarify that the maximum under-performance payment can be triggered by either "insufficient or inaccurate documentation of outages" or a SAIDI of 118 minutes or above by replacing the word "may" in the first sentence in the second paragraph with the "shall" (see Xcel's Proposed Service Quality Tariff page 4 of 10 and 8 of 10); and
 - d. subject to a supplemental compliance filing that includes a middle step in the section entitled "2. Telephone Response Time" (see Xcel's Proposed Service Quality Tariff page 7 of 10).
2. Meyer Shark's petition to intervene in this matter is denied.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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